

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SUSAN VINEYARD,

Complainant,

v.

CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS,

Respondent.

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Docket No: 04-0094

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ILLINOIS
COMMERCE COMMISSION
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RESPONDENT'S FINAL BRIEF

NOW COMES Respondent Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"), by and through its attorneys, Brown, Hay & Stephens, LLP and Elliott M. Hedin, and for its Final Brief following the introduction of testimony on October 5, 2004, states as follows:

I. INTRODUCTION

On February 10, 2004, Susan Vineyard filed a Formal Complaint with the Illinois Commerce Commission (the "Commission") alleging AmerenCIPS violated Sections 280.50(c) and 280.50(d) of the Illinois Administrative Code. The exhibits, testimony and legal arguments presented over the course of the eight months that have passed since the commencement of this case lead to one conclusion; Susan Vineyard failed to prove that AmerenCIPS violated Sections 280.50(c) and 280.50(d). Instead, what has emerged is a pattern of deceptive practices engaged in by Susan Vineyard to avoid paying past due balances due to AmerenCIPS. By using different permutations of the name "Susan Christina Vineyard" and a different social security number, Susan Vineyard successfully

obtained residential electrical service as a “new” customer from AmerenCIPS without alerting anyone to her prior outstanding balances. The Formal Complaint was only filed because AmerenCIPS uncovered Susan Vineyard’s deception and transferred these outstanding balances to her current account. The relief requested in this Formal Complaint is the culmination of Susan Vineyard’s deceptive practices and, as set forth below, should be denied.

II. ANALYSIS

Before discussing the merits of these alleged violations, it is necessary to consider what, if any, weight should be given to the testimony of Susan Vineyard. In Illinois, when a witness is found to have knowingly given false testimony on a material point, a fact finder may reject her entire testimony in so far as it is not corroborated by other testimony or by other facts appearing in the evidence. *Swift & Co. v. Industrial Comm’n*, 52 Ill.2d 490, 495, 288 N.E.2d 426 (1972); *Chicago, O. & P. Ry. Co. v. Rausch*, 245 Ill. 477, 481, 92 N.E. 300 (1910). At the hearing on October 5, 2004, Susan Vineyard engaged in the very conduct prohibited in Illinois; she knowingly gave false testimony on a material point.

A material issue in this case is the identity of the customer who opened account number 83110-01814 on December 20, 2001, for electrical service at 301 East Oak Street, West Frankfort, Illinois, in the name of Catherine S. Vineyard. Susan Vineyard testified that she does not know Catherine S. Vineyard. Ms. Hadley testified that AmerenCIPS received information in 2003 that Susan Vineyard lived at 301 East Oak Street and was obtaining electrical service under the false name of Catherine S. Vineyard. Ms. Hadley testified that after the service was disconnected, Susan Vineyard called to re-

connect service and admitted that she had been using the service under the name of Catherine S. Vineyard. Ms. Hadley also testified that Susan Vineyard gave different explanations over the course of several telephone calls as to how she knew the person named Catherine Vineyard. Susan Vineyard stated that Catherine Vineyard was her mother, her cousin, her sister, and then later stated it was a person living at 301 East Oak Street, but not a relative.

At the hearing on October 5, 2003, Susan Vineyard testified she was born Susan Christina Vineyard, and that since 1983, she has gone by the name Susan Vineyard or Susan C. Vineyard. Susan Vineyard's testimony was impeached when the undersigned introduced Susan Vineyard's April 26, 2000, bankruptcy petition filed in the United States Bankruptcy Court for the Northern District of California. The debtor's name in that case was "C. Susan Vineyard" and was signed, under the penalty of perjury, "C. Susan Vineyard." (AmerenCIPS Ex. O). Susan Vineyard's explanation for this outright fraud at the October 5, 2004, hearing, while under oath, was simply an unadulterated lie:

I did this on the bankruptcy petition because I was under a great deal of stress and duress when I filed it and I wanted to put the C in there and it looked like there wasn't enough room to put it after Susan so I just put it in front.

(Tr. at 171). She claimed to have signed the petition "C. Susan Vineyard" for the sake of consistency. Susan Vineyard's testimony is incredible and worthy of little or no belief. Susan Vineyard could have truthfully explained these discrepancies in her bankruptcy proceeding, but chose instead to continue to carry out her fraud, under oath, in this proceeding. In a case that involves allegations that Susan Vineyard used different permutations of her name to obtain electrical service from AmerenCIPS, knowingly giving false testimony on this material point provides a basis to reject her testimony in its

entirety under the above-mentioned authorities. Her testimony is uncorroborated by any other witness, and given the problems with her credibility, it would be well within the Commission's discretion to reject Susan Vineyard's self-serving testimony.

Susan Vineyard's Formal Complaint alleged AmerenCIPS violated Sections 280.50(c) and 280.50(d) of the Illinois Administrative Code. Each alleged violation will be addressed *seriatim*.

A. TITLE 83, PUBLIC UTILITIES, CHAPTER L, PART 280, SECTION 280.50(C)

Section 280.50(c) provides that, "A bill for one class of service (residential or non-residential) shall not be transferred to a bill for the other class of service." Susan Vineyard alleges that AmerenCIPS violated this section by improperly transferring the bill for non-residential service at 703 East Oak Street, Unit D, West Frankfort, Illinois (Account Number 61710-40817), to the bill for residential service at 301 East Oak Street, West Frankfort, Illinois (Account Number 83110-01823). In support of her claim that Unit D is non-residential, Susan Vineyard testified that utility service for Unit D is "electricity for exterior and hallway lights and does not meet the standards for habitability and is therefore to be rate [*sic*] non-residential." She also introduced documents for the purpose of establishing that she has never held title to 703 East Oak Street, Unit D.

Robin Hadley testified that Susan Vineyard obtained residential electrical service at 703 East Oak Street, Unit D, West Frankfort, Illinois on August 9, 1995. (Hadley Direct Testimony ("Hadley"), pp. 5, 8). Ms. Hadley stated that Unit D was billed at a residential rate until the day service was terminated on June 15, 1999. (*Id.* at 5). Finally, Ms. Hadley testified that AmerenCIPS subsequently transferred the past due bill for

residential service at 703 East Oak Street, Unit D, to the bill for residential service at 301 East Oak Street. (*Id.* at 5-6).

It should be noted at the outset that Susan Vineyard does not dispute that Unit D was billed at all times as residential service. Nor is there any dispute that 301 East Oak Street is a bill for residential service. Accordingly, Susan Vineyard is not arguing that AmerenCIPS violated the express language of 280.50(c), which provides that “a *bill* for one class of service ... shall not be transferred to a *bill* for the other class of service.” See § 280.50(c) (emphasis added). Rather, Susan Vineyard seeks to have the Commission expand § 280.50(c) beyond the plain language of the statute to prohibit a utility from transferring a bill under the facts in this case. This expansion of § 280.50(c) should be rejected as a matter of law and based on the record in this case.

Administrative regulations “have the force and effect of law, and must be construed under the same standards which govern the construction of statutes.” *Union Electric Co. v. Department of Revenue*, 136 Ill.2d 385, 391, 556 N.E.2d 236 (1990). It is a basic tenet of statutory construction that a court must interpret and apply statutes in the manner in which they are written, and can neither restrict nor enlarge the meaning of an unambiguous statute. *Henrich v. Libertyville High School*, 186 Ill.2d 381, 394-95, 712 N.E.2d 298 (1998). The regulation expressly provides that “a bill for one class of service ... shall not be transferred to a bill for the other class of service.” See § 280.50(c). The plain and unambiguous terms of the regulation limit the Commission’s inquiry under § 280.50(c) to whether the utility transferred a *bill* for one class of service to a *bill* for another class of service. A *post hoc* inquiry into the classification of the service is simply not contemplated by the plain unambiguous terms of the regulation. To argue that the

Commission must do more, look beyond the face of the bill to the particular facts and circumstances of every transfer, impermissibly enlarges the meaning of this unambiguous regulation. *Henrich*, 186 Ill.2d at 394-95.

The facts of this case also illustrate why this expansive interpretation of § 280.50(c) is flawed; it would permit a fraudfeasor to benefit from her own fraud. *Goldstein v. Lustig*, 154 Ill.App.3d 595, 603, 507 N.E.2d 164, 170 (1st Dist. 1987) (the general rule is that Illinois courts “will not aid a fraudfeasor who invokes the court’s jurisdiction to relieve him of the consequences of his fraud”). Under Susan Vineyard’s interpretation of § 280.50(c), a customer first benefits from paying the lower cost for residential service when the higher non-residential rate is actually applicable, and when the utility attempts to collect an outstanding balance by transferring the old residential service to the customer’s new residential service account, the customer is successfully able to prevent that transfer by claiming that the old account was actually a non-residential account. Under Susan Vineyard’s interpretation of § 280.50(c), the fraudulent customer is able to switch the classification of the service to her advantage – the service is residential when paying lower utility bills and non-residential when the utility is collecting a past due debt. Thus, Susan Vineyard’s interpretation would allow her to benefit from her own wrongdoing, which is fundamentally unjust and prohibited in Illinois. *Goldstein*, 154 Ill.App.3d 595 at 603. Therefore, the Commission should reject Susan Vineyard’s expansive interpretation of § 280.50(c). *Croissant v. Joliet Park District*, 141 Ill.2d 449, 455, 566 N.E.2d 248 (1990) (“Statutes are to be construed in a manner that avoids absurd or unjust results”).

Further, Susan Vineyard should be estopped from alleging that the service at 703 East Oak Street, Unit D, was anything other than residential service. *M.J. Oldenstedt Plumbing Co. v. K-Mart Corp.*, 257 Ill.App.3d 759, 629 N.E.2d 214, (3d Dist. 1994) (The purpose of the equitable estoppel doctrine is to prevent a party from taking advantage of his or her own wrongdoing). Ms. Hadley stated that all of the bills for service at 703 East Oak Street, Unit D, were billed at a residential rate. Susan Vineyard allegedly knew at all times that the service should not have been billed at the lower residential rate. AmerenCIPS had no knowledge that the service should have been billed at a non-residential rate. Despite her knowledge and AmerenCIPS lack thereof, Susan Vineyard continued to receive and pay lower electrical bills to the detriment of AmerenCIPS. Susan Vineyard had a duty to notify AmerenCIPS of any incorrect billing for Unit D. Because she knowingly and intentionally failed to notify AmerenCIPS of the purported billing error and due to her corresponding decision to remain silent and benefit from the lower rate, Susan Vineyard should be estopped from alleging that the service should have been billed at a non-residential rate. *M.J. Oldenstedt Plumbing Co.*, 257 Ill.App.3d at 765.

The record here also does not support Susan Vineyard's claim that AmerenCIPS violated § 280.50(c). The undisputed testimony established that 703 East Oak Street, Unit D, both before and at all times during the circumstances at issue in this case, was billed as a residential account. (Tr. at 217). No testimony has been introduced that would even suggest Susan Vineyard or previous occupants chose non-residential service and AmerenCIPS failed to comply with that request. If AmerenCIPS had been informed that the address was non-residential, Ms. Hadley testified that AmerenCIPS would

change the classification and back bill two years for a more expensive rate. (Tr. at 218, 237). There is nothing in the record to demonstrate that Susan Vineyard or anyone else has ever made such a notification to AmerenCIPS. Nor has Susan Vineyard introduced any testimony that would indicate that AmerenCIPS knew or had reason to know that Unit D should not have been set as residential. Ms. Hadley testified that she had seen a picture of the dwelling located at 703 East Oak Street and stated there was nothing about the residence that would suggest it was commercial. (Tr. at 220).

Finally, Susan Vineyard has repeatedly argued in this case that she has never held title to 703 East Oak Street under the apparent belief that this fact will absolve her of any responsibility for the past due bills incurred at that address. Susan Vineyard, however, has not cited one provision of the Illinois Administrative Code, any Illinois Statutory provision, or any other authority whatsoever in support of this argument. Property ownership is simply not a prerequisite for establishing electrical service with AmerenCIPS. As Ms. Hadley testified, the person who applies for and receives electrical service does not have to be the property owner. It could be tenant, renter, lessee or someone of similar nature who obtains electrical service from AmerenCIPS. To suggest that AmerenCIPS can only collect past due bills from the property owner is illogical, without reason and totally irrational.

Here, AmerenCIPS transferred a bill for residential service to a bill for residential service in compliance with § 280.50(c). That is all that is required and Susan Vineyard's invitation to the Commission to expand § 280.50(c) beyond its plain terms, and find AmerenCIPS in violation of same, should be rejected by the Commission.

B. TITLE 83, PUBLIC UTILITIES, CHAPTER L, PART 280, SECTION 280.50(d)

Susan Vineyard contends that AmerenCIPS violated § 280.50(d) by transferring the outstanding bills for Account Numbers 83110-01814, 61710-40817, and 00710-43215 to Account Number 83110-01823. Section 280.50(d) provides that:

If a utility takes applications for service by telephone from third parties or users who will not be the customers of the service, and if the utility does not verify the third party or user application with the customer, the utility shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service[.]

Susan Vineyard contends that Account Numbers 83110-01814, 61710-40817, and 00710-43215, were opened in the names of Catherine Vineyard, Toscano Land Trust and Sangiovese Land Trust without complying with § 280.50(d)'s verification requirements.

It is not clear how Susan Vineyard's allegations fall under the purview of § 280.50(d). Under § 280.40 a "customer" is defined as "a person who has agreed with a utility to pay for gas, electric, water or sanitary sewer utility service." For accounts 61710-40817 and 00710-43215, the accounts associated with the Toscano Land Trust and Sangiovese Land Trust, the testimony reflects that Susan Vineyard was named as a customer on both accounts when they were opened. (Hadley p. 8, 10). The record also reflects that Susan Vineyard called and applied for service on both accounts. (*Id.*) This is simply not a situation where a "third party" or "user" applied for services by telephone for which there might be a violation under § 280.50(d). Instead, Susan Vineyard was the "customer," *i.e.*, the person who agreed with a utility to pay for electric service, and

AmerenCIPS is now seeking to collect from that “customer.” AmerenCIPS actions here are therefore not prohibited by § 280.50(d).

Susan Vineyard’s argument that § 280.50(d) also prohibits AmerenCIPS from collecting from Susan Vineyard the outstanding balance on Catherine Vineyard’s account is equally without merit. Section 280.50(d) was not designed to protect an individual who fraudulently obtains electrical service from the utility. Under Susan Vineyard’s interpretation of the regulation, a utility cannot collect an outstanding balance from the individual who obtained service by fraudulent means unless the utility verified the fraudulent application with the same individual who perpetrated the fraud. In other words, AmerenCIPS cannot collect the balance Susan Vineyard accrued by applying for and obtaining service as Catherine Vineyard unless AmerenCIPS verified Catherine Vineyard’s application with Susan Vineyard. Section 280.50(d) is not a loop hole designed to benefit fraudfeasors as suggested by Susan Vineyard. This type of circuitous logic is endemic to Susan Vineyard’s arguments to the Commission and should be rejected.

The express language of § 280.50(d) provides another basis to reject Susan Vineyard’s claim here. After indicating that a utility cannot collect from a customer in certain circumstances, the section provides that “however, users will be responsible for paying for their use.” A “user” is defined as “a person who receives gas, electric, water or sanitary sewer utility service.” *See* § 280.40. The record reflects that Susan Vineyard was clearly the “user” of the account in Catherine Vineyard’s name. She has admitted in this proceeding to owing all sums accumulated in the name of Catherine S. Vineyard from May 2002 until September of 2003. (Vineyard Direct, p. 2). But a brief historical

summary of the accounts opened at 301 East Oak Street reflects that Susan Vineyard was the “user” of electrical services at the address long before May of 2002.

Ms. Hadley testified that on December 12, 1991, Susan Vineyard opened a residential service account at 301 East Oak Street, West Frankfort, Illinois, in the name of Susan Vineyard c/o Sangiovese Land Trust. (Hadley p. 10; Tr. 239-40). Susan Vineyard used her own social security number when she opened this account. Ms. Hadley stated that the account was closed on April 2, 2001, with a balance of \$1,181.66, and it was only towards the end that AmerenCIPS had problems collecting on the account. (Hadley p. 10.)

On that same day, April 2, 2001, a new account was opened at the same address, 301 East Oak Street, in the name of Christine Susan Vineyard using a social security number that is identical to Susan Vineyard’s “federal ID.” (Hadley p. 12; Tr. at 174). This is the same “federal ID” that “C. Susan Vineyard”, also known as Susan Vineyard, used when she filed her California bankruptcy petition in 2000. Christine Susan Vineyard’s account at 301 East Oak Street was closed on December 5, 2001, with an outstanding balance of \$383.35.

Fifteen days later, on December 20, 2001, a new account was opened at 301 East Oak Street, this time in the name of Catherine S. Vineyard, using yet another social security number. (Hadley p. 2-3; Tr. at 240). Susan Vineyard admitted in September 2003, after AmerenCIPS discovered her fraud, that she had been living at 301 East Oak Street and paying the electric bill in the name of Catherine S. Vineyard for more than 15 months. (*Id.* at 183).

Accordingly, the record demonstrates that Susan Vineyard has been the “user” of electrical services at 301 East Oak Street for 12 consecutive years. Each time there was a significant outstanding balance for electrical service, the service was disconnected and immediately reconnected under a different permutation of Susan Vineyard’s name and/or social security number. This process continued until AmerenCIPS disconnected the service at 301 East Oak Street in September 2003 after learning that Susan Vineyard was obtaining electrical service under the name Catherine S. Vineyard using a fake social security number. Despite the foregoing, Susan Vineyard now asks this Commission to find, based on her uncorroborated testimony, that she was not the “user” of service at 301 East Oak Street other than the time frame she admitted to using the service as Catherine S. Vineyard. Her request should be rejected because her self-serving testimony is unworthy of belief and unsupported by the record.

Susan Vineyard’s acceptance of responsibility for service in the name of Catherine S. Vineyard provides yet another example of her deceptive efforts to avoid paying her past due accounts. After Catherine S. Vineyard’s service was disconnected, the record reflects Susan Vineyard immediately called AmerenCIPS to establish service at 301 East Oak Street in her own name. When she was asked who Catherine S. Vineyard was, Susan Vineyard provided AmerenCIPS representatives with various contradictory explanations as to the identity of Catherine S. Vineyard. During several conversations with AmerenCIPS employees, Susan Vineyard stated that Catherine S.

Vineyard was her mother, her cousin, her sister, and then later stated it was a person living at 301 East Oak but not a relative. (Hadley, p. 2; AmerenCIPS Ex. C).¹

When these excuses proved unavailing, Susan Vineyard finally admitted to AmerenCIPS that she had been using the service in Catherine S. Vineyard's name for the past 15 months and accepted responsibility for the corresponding charges. (AmerenCIPS Ex. F). But she did not make this admission immediately as she has suggested to the Commission in this proceeding. Rather, it was not until later in October, when Susan Vineyard drafted a letter to AmerenCIPS where she begrudgingly accepted responsibility for Catherine S. Vineyard's electrical service. (*Id.*)

But again, even this admission to AmerenCIPS was steeped in Susan Vineyard's continuing fraud. In the same letter where she finally admitted to using service in the name of Catherine S. Vineyard, she informed AmerenCIPS that her other past due balances (for Sangiovese Land Trust, Toscano Land Trust, etc.) were a part of her California bankruptcy and could not be collected. (*Id.*) While these debts had been included on her amended schedules, Susan Vineyard failed to inform AmerenCIPS that her discharge in bankruptcy had already been revoked for fraud. (Tr. at 188-89). This is yet another example of Susan Vineyard's fraudulent efforts to avoid responsibility for her past due debts.

III. CONCLUSION

Susan Vineyard now asks the Commission to find that she is the victim of an elaborate scheme where her identity was stolen and used to obtain electrical services from AmerenCIPS. This claim of identity theft is simply the last in a long line of excuses

¹At the hearing on October 5, 2004, Susan Vineyard provided yet another explanation, stating this time that she did know who Catherine S. Vineyard was. (Tr. at 183).

Susan Vineyard has concocted in the hope of avoiding her past due obligations for electrical service. She has no credibility and her self-serving testimony is unworthy of belief and is not supported by the record. The overwhelming weight of the evidence clearly demonstrates that Susan Vineyard was at all relevant times the customer and user of electrical services at 703 East Oak Street, Unit D and 301 East Oak Street in West Frankfort, Illinois. The record further demonstrates that AmerenCIPS transferred Susan Vineyard's account in compliance with § 280.50(c), and that AmerenCIPS' collection efforts have not run afoul of § 280.50(d). Susan Vineyard has therefore failed to prove the allegations in her Formal Complaint.

WHEREFORE, Central Illinois Public Service Company d/b/a AmerenCIPS requests the Illinois Commerce Commission deny the prayer of the Formal Complaint by Susan Vineyard, dismiss the same and award all other appropriate relief in the favor of AmerenCIPS.

**CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS, Complainant,**

By: 

One of Its Attorneys

Elliott M. Hedin
Brown, Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
Telephone (217) 544-8491
Facsimile (217) 544-9609

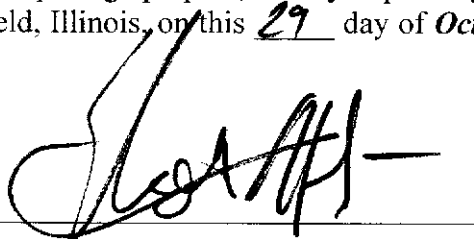
PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Respondent's Final Brief* was served upon:

Larry Jones
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol
Springfield, IL 62701

Susan Vineyard
301 East Oak Street
West Frankfort, IL 62896

electronically and by enclosing the same in an envelope addressed to his or her address as disclosed by the pleadings of record herein, with postage prepaid, and by depositing said envelope in a U.S. Post Office box in Springfield, Illinois, on this 29 day of *October*, 2004.

A handwritten signature in black ink, appearing to be "L. A. H.", is written over a horizontal line.